



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, IL 60610

COPY MAILED

SEP 14 2007

OFFICE OF PETITIONS

In re Application of	:	
Sato Kiyoshi	:	
Application No. 10/716710	:	DECISION ON APPLICATION
Filed: 11/17/2003	:	FOR PATENT TERM ADJUSTMENT
Patent No. 7,209,322	:	
Issued: 04/24/2007	:	
Attorney Docket Number:	:	
9281-4693	:	

This is a decision on the "Request for Reconsideration of Patent Term Adjustment", filed June 25, 2007. Patentee requests, pursuant to 37 CFR 1.703(b), an additional period of adjustment of one hundred fifty-eight (158) days.

The request for reconsideration of patent term adjustment is **DISMISSED**.

Patentee is given **two (2) months** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136.

On April 24, 2007, the above-identified application matured into U.S. Patent No. 7,209,322. The patent issued with a PTA of five hundred sixteen (516) days.

The Office determined a patent term adjustment of five-hundred sixteen (516) days pursuant to 37 CFR 1.702(a)(1) for failure to mail a first Office action of Notice of Allowance more than 14 months after the actual filing date of the application or more than 14 months after the date the application fulfilled the requirements of 35 U.S.C. 371. Specifically, the application was filed on November 17, 2003. The Office mailed a first Office action on June 19, 2006.

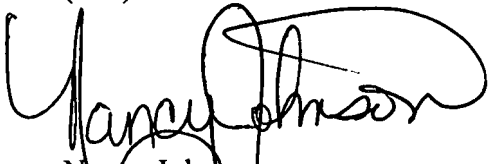
Petitioner files the present petition and asserts that pursuant to 37 CFR 1.703(b) an additional period of adjustment of one hundred fifty-eight days. Petitioner states that the present application was filed on November 17, 2003. The 3 year date specified in 37 CFR 1.703(b) is November 17, 2006. The PTO issued a patent for the present application on April 24, 2007. The difference between the 3 year date and the date the patent issued is 158 days. As such, Applicant concludes that the period of adjustment should be at least $518 \text{ days} + 158 \text{ days} - 2 \text{ days} = 674 \text{ days}$.

Patentee is advised that any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent, will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f). In this instance, the period of delay totalling 158 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 516 attributable to grounds specified in § 1.702(a)(1). Thus, no additional period of adjustment was entered beyond the 516 days.

In view thereof, the patent correctly issued with a revised Patent Term Adjustment of five hundred sixteen (516) days.

Petitioner's deposit account has been charged the \$200.00 fee set forth in 37 CFR 1.18(e) as authorized in the Transmittal filed with the petition. No additional fees are required.

Telephone inquiries specific to this matter should be directed to Attorney Derek L. Woods at (571) 272-3232.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions